IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 868 of 2005

Decided on: 05.07.2007

Sita Devi

… … … Petitioner.

Versus

Union of India & Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner: **Pt. Om Parkash Sharma, Advocate.**

For the Respondents: **Mr. Ashwani Pathak, Central Govt. Counsel.**

Rajiv Sharma, Judge:

The brief facts which can be culled out from the pleadings of the parties are that the petitioner's late husband Shri Ranbir Singh was enrolled in the Indian Army (Dogra Regiment) on 23rd September, 1955 and was invalided out of service by a medical board held at Military Hospital, Delhi Cantt on 8th October, 1959 and was discharged from the service on 25th January, 1960 after rendering 4 years and 124 days under Army Rules 1954 Rule 13

Whether reporters of local papers may be allowed to see the judgment? Yes.

item III (iii) due to Anxiety State Chromic. The Medical Board proceedings were approved and counter signed by the Assistant Director, Medical Services, Delhi and Rajasthan area on 24th October, 1959.

Deceased Ranbir Singh was granted a temporary disability pension with effect from 25th January, 1960 to 19th March, 1977. The temporary disability pension was discontinued from 20th November, 1977 when his disability was re-assessed at less than 20% vide letter dated 4th March, 1978. The appeal preferred by deceased Ranbir Singh was rejected on 17th January, 1979 and the second appeal was rejected on March, 1981. Shri Ranbir Singh died on 2.4.1997. The petitioner had also filed an appeal dated 5th April, 1999, but she was informed vide letter dated 7th May, 1999 that she was not entitled to any family pension for the reason that the disability pension of her husband was discontinued with effect from 20th November, 1977. The petitioner was also informed vide letter dated 2nd August, 2000 that she was not entitled to any family pension and the form submitted by here was returned. She also made a representation to the Chief Comptroller of Defence Accounts (Pension) on 7.7.2005.

Pt. Om Parkash Sharma, Advocate during the course of arguments had also placed on record a copy of letter dated 23rd December, 1992 and the same is taken on record. Pt. Om Parkash Sharma had strenuously argued that the deceased Shri Ranbir Singh was invalided out from the Army with effect from 25th January, 1960 after rendering 4 years and 124 days service and

was granted disability pension with effect from 25.1.1960 to 19.11.1977, but the same had been stopped after re-survey medical board held on 4th March, 1978 whereby his disability was re-assessed at less than 20%. Pt. Om Parkash Sharma thus contended that the vires of letter dated 23rd December, 1992 fell for consideration before the Hon'ble Punjab and Haryana High Court in **Gurnam Singh versus Union of India 1995 (4) SCT, 278 whereby** the Hon'ble Punjab and Haryana High Court has declared the categorization of personnels receiving invalid pension on the basis of prescription of different periods arbitrary. Mr. Ashwani Pathak had supported the decision taken by the authorities after 19th November, 1977.

I have heard the parties and gone through the record.

The picture which emerges from the above stated facts is that the deceased Ranbir Singh was invalided from the Army and was granted disability pension with effect from 25th January, 1960 to 19th November, 1977. The disability of the deceased Ranbir Singh was re-assessed on 4th March, 1978 when it was re-assessed at less than 20%. Admittedly no re-survey medical board was convened thereafter.

The relevant portion of letter dated 23rd December, 1992 is reproduced as under:-

> **"There appears to exists some misapprehension that service element will be continued for life even the accepted degree of disablement fall short of 20%. The factual rule position is given below:**

The disability pension constitutes two elements (i) service element and (ii) disability element. The disability element, is payable for a limited period as notified in the pension payment order(s) notified from time to time unless it is notified for life. However, the service element of disability pension is payable for life only in respect of such individuals who were retired/discharged from service or invalided out of service as under:

(i) Individuals invalided out of service before 01-03-68 with 10 years or more service.

(ii) Individuals invalided out of service on or after 1-3-68 but before 31-12-72 with more than 5 years or more service.

(iii) Individuals invalided out of service on or after 1-1-73 with any period of length of service.

In view of the above provisions, the pension disbursing Authorities in the case of individuals at item (i) and (ii) above shall make payment of service element of disability pension for life only where it is specifically notified by the Controller of Defence Accounts (Pensions) in its pension Payment Order and in the absence of such specific authorization for life, the service element shall be payable only for the period for which disability element is authorized."

It is evident from the reading of letter dated 23rd December, 1992 that the disability pension was to be paid to an individual for life even if the accepted degree of disablement fall short of 20% but with a rider that individuals invalided out of service before 1.3.1968 with 10 years or more service, individuals invalided out of

service on or after 1.3.1968 but before 31.12.1972 with more than 5 years or more service and the individuals invalided out of service on or after 1.1.1973 with any period of length of service. Shri Ranbir Singh had been invalided out of service on 25th January, 1960 after rendering 4 years and 124 days of service. He has been denied the disability pension only on the ground that the disability fell short of 20% by the re-survey medical board in the year 1977.

The Hon'ble Punjab and Haryana High Court in ***Gurnam Singh Versus Union of India, 1995 (4) SCT 278*** has held as under:

> **"From the documents which have been placed on record, it is clear that the petitioner was discharged from the military service on the ground of low medical category. He was given medical category 'EEE' at the time of discharge from the service. Annexure P-2 is conclusive proof of the fact that the petitioner was given disability pension. This disability pension must have been given to the petitioner on fulfillment of the conditions enumerated in Regulations 173 of the Pension Regulations. By virtue of order (Annexure P-5) the Government of India took a policy decision to extend the benefit of the disability pension to the Army personnel below the officer rank who were granted disability pension at one time but whose disability fell below 20 per cent at a later stage. Annexure P-6 contains similar instructions regarding the grant of disability pension of those whose disability falls below 20 per cent. However, the instructions contained in Annexure P-6 have been made applicable only to those who were**

on the effective strength of the Army on 1.1.1973. If the petitioner has been discharged from the service after 1.1.1973, he would have become entitled to the grant of disability pension notwithstanding the fact that his disability was subsequently reduced below 20 per cent. Therefore, not it has to be seen whether the restricted application of the instructions contained in Annexure P-6 has got any rationality. There can be no manner of doubt that the petitioner was in receipt of the disability pension as on 1.1.1973 and he continued to draw the disability pension upto 20.8.1974. Some of the Army personnel who were discharged from service after 1.1.1973 and who were given disability pension after 1.1.1973 were placed at par with the petitioner. With reference to the object of giving the benefit of disability pension to those whose disability fell below 20 per cent, the petitioner and others who were discharged after 1.1.1973 constituted one class. With reference to the object aforementioned, there could be no rationales of confining the benefit of the disability pension only to those who were discharged after 1.1.1973. The entire object of extending the benefit of the disability pension even after the reduction of the degree of disability will be frustrated in the cases of the persons like the petitioner, who was actually in receipt of the disability pension on 1.1.1973 but whose disability fell below 20 per cent after 1.1.1973 are denied benefit of disability pension. To me, fixation of the date as 1.1.1973 has absolutely no nexus with the object of granting the disability pension to those who were initially having the disability of 20 per cent or more but whose degree of disability reduced at a later point of time. To this

extent the provisions contained in Annexure P-6 are liable to be declared as unconstitutional.

In the result, the writ petition is allowed. The following expression in the order Annexure P-6 is declared ultra vires to Article 14 of the Constitution:-

> ***"These orders will take effect from 1st January, 1973 i.e. these will apply to all those who were on the effective strength of the Army on that date and who became non-effective thereafter."***
>
> ***The respondents are directed to give benefit of the disability pension to the petitioner as had been given to those who have been discharged from the service after 1.1.1973."***

In view of the judgment of the Hon'ble Punjab and Haryana High Court, Shri Ranbir Singh was entitled to disability pension even if his disability was assessed at less than 20% for life. His disability pension was discontinued with effect from 20th November, 1977 and he had died on 2.4.1997. The only reason for denying the family pension to the petitioner was that Shri Ranbir Singh was not getting any pension at the time of his death as per para 212 of Pension Regulations of the Army. Since the Court had held that Shri Ranbir Singh was entitled to disability pension for life, it means that at the time of his death he will be deemed to be receiving disability pension and on that basis, the petitioner is also entitled to family pension.

Accordingly, the petition is allowed. Annexures R-1, dated 4th March, 1978 and R-B, dated 2.8.2000 are quashed and set aside. The respondents are directed to pay the disability pension

of late Shri Ranbir Singh with effect from 20th November, 1977 till 2nd April, 1997 to the petitioner and thereafter to grant her family pension. The respondents are directed to comply with the above directions within a period of eight weeks from today. The parties are left to bear their own costs.

(Rajiv Sharma), Judge.

July 05, 2007
(sck).